MONTANA LEGISLATIVE HISTORY

Chapter 180 19 83

Bill H _____ S 236 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 09	✓ C	Hearing Date(s)	Jan 28	✓ C
		C		Feb 02	✓ C
		C			C
		C			C
Date Out	Mar 09	✓ C		Feb 02	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

SENATE BILL NO. 236

INTRODUCED BY CRIPPEN

IN THE SENATE

January 20, 1983	Introduced and referred to Committee on Judiciary.
February 2, 1983	Committee recommend bill do pass as amended. Report adopted.
February 3, 1983	Bill printed and placed on members' desks.
February 5, 1983	Second reading, do pass as amended.
February 7, 1983	Correctly engrossed.
February 8, 1983	Third reading, passed. Ayes, 48; Noes, 2. Transmitted to House.

IN THE HOUSE

February 9, 1983	Introduced and referred to Committee on Judiciary.
March 9, 1983	Committee recommend bill be concurred in. Report adopted.
March 10, 1983	Second reading, concurred in.
March 11, 1983	Third reading, concurred in.

IN THE SENATE

March 12, 1983

Returned to Senate. Sent to enrolling.

Reported correctly enrolled.

INTRODUCED BY _____ BILL NO. 236

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, 44-12-205, 44-12-206, AND 46-18-235, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9; ~~and~~

(f) all drug paraphernalia as defined in 45-10-101.; and

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate any violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common

SB 236

carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana."

Section 2. Section 44-12-205, MCA, is amended to read:

"44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the

hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) No property referred to in 44-12-102(1)(c) may be forfeited to the extent of the interest of an owner by reason of any act or omission established by such owner to have been committed or omitted without his knowledge or consent. All money found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances is presumed to be forfeitable. The burden is on the owner of the property to rebut this presumption.

~~(b)~~(c) If no claimant exists and the confiscating agency wishes to retain the property for its official use,

it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

~~(c)~~(d) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure."

Section 3. Section 44-12-206, MCA, is amended to read:

"44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

~~(1)~~(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

~~(2)~~(b) the remainder, if any, to the county treasurer of the county in which the property was seized, ~~for deposit in the county general fund~~ who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund, except as provided in subsection ~~(3)~~ (1)(c);

~~(3)~~(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, ~~for deposit in the city or town general fund~~ who shall establish and maintain a drug forfeiture fund and

deposit the remainder into the fund.

(2) All proceeds from any source that are deposited into a drug forfeiture fund must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug enforcement and education."

Section 4. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose."

-End-

48th LEGISLATIVE SESSION

COMMITTEE ON SENATE JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
201	1-19-83	1-31-83	2-2-83	2-2-83					
203	1-19-83	1-31-83	2-15-83			2-15-83			
218	1-19-83	1-31-83	2-2-83	2-2-83					
220	1-19-83	2-1-83	2-2-83	2-2-83					
225	1-19-83	2-1-83	2-2-83	2-2-83					
225	2-7-83	2-10-83	2-15-83			2-15-83			
226	1-19-83	1-28-83	1-28-83						
236	1-20-83	1-28-83	2-2-83			2-2-83			
237	1-20-83	2-1-83	2-7-83			2-9-83			
248	1-21-83	1-31-83	2-7-83			2-7-83			
260	1-24-83	1-27-83	1-27-83	1-27-83					
261	2-10-83	2-14-83	TABLED						
262	1-24-83	2-3-83	TABLED						
290	1-26-83	2-3-83	2-7-83			2-7-83			
303	1-27-83	2-7-83	TABLED						
313	1-28-83	2-4-83	2-17-83			2-17-83			

Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 28, 1983

The seventeenth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 28, 1983 at 10:02 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Galt who was excused.

CONSIDERATION OF SENATE BILL 226: Senator Crippen, sponsor of this bill, presented it on behalf of the County Attorney's Association. SB226 would provide that either party may move for a continuance of hearing when the youth is in custody as well as when the youth is not in custody. This will provide additional time to both parties to obtain evidence pertinent to the hearing. The court would have the discretion of refusing a continuance if it is not in the best interests of justice.

PROPONENTS: Marc Racicot of the County Attorney's Association, spoke as a proponent to this bill. He stated it will remedy the situation when the evidence obtaining process takes longer than 15 days and also the situation of when the youth is out of state.

Bryce Johnson of the Montana Probation Officers Association, also supported this bill. He stated that scheduling court time and the placement of youths in group homes sometimes takes longer than the 15 day period now statutorily required.

OPPONENTS: Wes Krawczyk of the American Civil Liberties Union, objected to SB226 as he felt it would be detrimental to incarcerate a youth longer than necessary.

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Senator Mazurek asked Bryce Johnson where youths were normally kept when in custody. He was advised that they are always incarcerated separately from adult offenders.

Senator Crippen closed by saying he was concerned about the conditions in which the youth would be incarcerated; but assured the Committee that the judge will insure that the rights of the youth are taken into consideration.

CONSIDERATION OF SENATE BILL 236: Senator Crippen sponsored this bill on behalf of the County Attorney's Association. He explained that the bill will expand the definition contained

in state drug laws of "things subject to forfeiture" to include all money and property (1) used in the sale of drugs, (2) bought in the sale of drugs, and (3) used to facilitate the sale of drugs. SB236 would also set up a drug forfeiture fund and authorize the use of the fund for drug enforcement and education.

PROPONENTS: Marc Racicot, representing the County Attorney's Association, informed the Committee that the proposed legislation is currently being used in other jurisdictions and it was modeled after a similar Drug Enforcement Administration act. The seizing of property used in drug crimes will help finance the battle against future drug crimes.

Sheriff Chuck O'Reilly, representing the Montana Peace Officer's Association, supported this bill and advised that the Supreme Court has said that only the legislature can give them the authority contained in this proposal.

There being no further proponents and no opponents, the hearing was closed.

CONSIDERATION OF SENATE BILL 194: Senator Aklestad, sponsor of this bill, advised that it was drafted at the request of the Clerks of District Courts. They feel that SB194 would provide them with a more workable and cost saving method for the selection of jurors.

Chairman Turnage advised that letters of support were received from the Clerks of the following counties: Chouteau, Hill, Prarie, Fallon,Garfield, Broadwater, Rosebud, Sweet Grass, Treasure, Yellowstone,Sanders, Roosevelt, Madison, Dawson, Carter, Lincoln, Golden Valley, Sheridan and McCone.

PROPONENTS: Margie Jackson, Clerk of Glacier County District Court, advised the Committee that the Clerk's Association has worked out a new system for the selection of jurors. She distributed a handout which describes the reasoning for this new system (Exhibit "A").

Kathryn A. Humphrey, a Clerk of District Court, explained how the system presently used for the selection of jurors is time consuming and inefficient. She then demonstrated the capsule system to the Committee, and all members noted the difficulty involved. The Clerks feel that by eliminating the capsules, the random drawing system would be significantly simplified. She also pointed out that the clerks do not have any vested interest in who sits on a jury anyway.

There being no further proponents, and no opponents, the hearing was closed.

passed unanimously. Senator Halligan suggested the possibility of tying some of the drug forfeiture money (as proposed in SB236), to this bill so as to help support the intelligence section. The Committee felt this idea might be worth looking into. Senator Berg expressed his disapproval of the bill in its entirety.

DISPOSITION OF SENATE BILL 226: Senator Crippen moved that SB226 DO PASS. This motion passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 236: The language and intent of the bill were further discussed by the Committee. The application of the rebuttable presumption to all property was considered at length. Senator Turnage questioned whether the bill would include real property in addition to proceeds. Senator Mazurek was concerned with the wording of "intended to be used." Senator Halligan felt the money confiscated under this bill should be allowed to support other law enforcement functions. The Committee felt the bill should be referred to counsel for work on the rebuttable presumption.

FURTHER CONSIDERATION OF SENATE BILL 194: Chairman Turnage expressed concern as to the authority this bill would give the Clerks of Court to excuse jurors. It was the concensus of the Committee that the power of the clerk to excuse jurors should be subject to approval of the court. SB194 was then referred to counsel for amendments.

DISPOSITION OF SENATE BILL 188: The Committee discussed how a passenger could determine the level of intoxication of their driver and it was the concensus of the Committee that this would be a difficult law to administer. Senator Crippen moved SB188 DO NOT PASS. This motion passed unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:22 a.m.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 1-28-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)			✓
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 2, 1983

The twentieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 2, 1983 at 10:05 a.m. in Room 331, State Capitol.

ROLL CALL: All members were present.

The Chairman announced that the Committee was ready to consider executive action on several bills previously heard.

FURTHER CONSIDERATION OF SENATE BILL 155: Senator Berg moved that SB155 DO NOT PASS. The Chairman reviewed the intent of the bill and the problems addressed by its proponents. A letter was received from the Highway Department which provided the information requested by the Committee at the January 26 meeting (See Minutes, January 26, for letter). It was the concensus of the Committee that the problem the proponents of SB155 are facing is federal in nature; however, it was agreed that something should be done to help these people. The Chairman suggested amending the bill to change its application from the "contiguous owner" of the property for sale to "the people in the same position as an original owner or successor in interest." Senator Berg withdrew his motion and the bill was referred to staff counsel for researching the proposed amendment.

ACTION ON SENATE BILL 179: Since there is currently a House bill pending which better deals with the conflicts between the antidiscrimination and nepotism laws, Senator Crippen moved to TABLE SB179. This motion passed unanimously.

ACTION ON SENATE BILL 194: Counsel distributed copies of the proposed amendment to the Committee for review. Senator Mazurek pointed out that Section 20 of the bill allocates mineral interest earned on trust for unlocatable mineral interest owners to be credited to the district court fund rather than the county general fund. The Committee felt this section should be striken in its entirety. Senator Mazurek then moved the proposed amendments along with this deletion which passed unanimously. Senator Brown moved SB194 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 236: Counsel distributed copies of the amendment as proposed and the Committee discussed the reasons for adding rebuttable presumption. They felt this would expand on the property to be forfeited. Senator Mazurek questioned the language referring to burden on lending institutions. After reading the amendment further it was found that the later language clears up this question. It was also pointed out that

section 44-1-102 as referred to in number 4 of the amendment should be changed to 44-12-102. Senator Mazurek then moved to adopt the amendments. This motion passed unanimously. Senator Crippen moved that SB236 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 201: Chairman Turnage referred the Committee to the letter written by Judge Harkin which summed up the intent of this bill. Senator Shaw moved that SB201 DO PASS. This motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 203: The Committee agreed that the intentions of this bill are good; however, they felt that the bill, as worded, would prevent a judge who was defeated during an election from serving. Action was therefore deferred so that this fact could be taken into consideration.

ACTION ON SENATE BILL 218: Senator Crippen moved that SB218 DO PASS. Senator Berg inquired as to the definition of "disturbed or inebriated" as referred to in the bill. The Committee agreed that these words would give the sheriff some discretionary latitude. The motion for a DO PASS recommendation was then voted on and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 248: John Maynard of the Attorney General's Office, distributed a handout which explains his position on the bill (Exhibit "A"). This information had been requested by the Committee at the January 31 hearing. It was the concensus of the Committee that the bill was not acceptable for passing; however, there were some provisions which needed saving. The 90 day review of fitness to proceed and provision which allows the state to raise this issue were decided to be important. It was also agreed that it is necessary to correct the reference to section 10, which had been incorrectly referred to as section 9 by the past legislature. Counsel questioned if the Committee intended to include a provision for disposition of highly dangerous people who were unfit for further criminal proceedings. The Committee advised they felt a provision of this nature is necessary and referred the bill to counsel for work.

ACTION ON SENATE BILL 196: The Committee was concerned with the automatic cost-of-living adjustment provision of this bill. They felt that if this was passed for the court reporters, other county and city employees would request the same. The salary increase as proposed was again discussed. Senator Crippen suggested reducing the minimum base salary to $16,000 since their overall increase in salary is approximately 30%. Senator Halligan moved the adoption of the above. This motion passed unanimously. The Committee also felt that "for purposes of perfecting an appeal" should be deleted from page 4, line 5,

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-2-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 236

Crippen

Respectfully report as follows: That Senate Bill No. 236

introduced bill, be amended as follows:

1. Title, line 6.
   Following: "LAWS;"
   Insert: "TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED;"

2. Title, line 8.
   Following: "44-12-102,"
   Insert: "44-12-203 THROUGH"

3. Title, line 9.
   Strike: "44-12-205,"

(continued on page 2)

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

4. Page 3.
Following: line 16
Insert: "Section 2. Section 44-12-203, MCA, is amended to read:
"44-12-203. ~~Procedure~~ Presumption -- procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.

~~(1)~~ (2) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court ~~shall hear evidence on the charge of unlawful use on the property and~~ upon motion may must order the property forfeited to the state.

~~(2)~~ (3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure."

Section 3. Section 44-12-204, MCA, is amended to read:
"44-12-204. Proof required or permitted at hearing. ~~(1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.~~ In order to rebut the presumption of forfeiture: (1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged.

(2) an owner of property listed in 44-12-102(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent.

~~(2)~~ (3) A a claimant of a security interest in the property who has a verified answer on file ~~may~~ must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner,

(continued on page 3)

Chairman.

STATE PUB. CO.
Helena, Mont.

purchaser, or person in possession of the property when it was brought to such person.""
Renumber: subsequent sections

5. Page 3, line 20.
Following: "charged,"
Insert: "and that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner,"

6. Page 3, line 23.
Following: "charged,"
Insert: "and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner,"

7. Page 4, lines 14 through 23.
Strike: subsection (b) in its entirety.
Renumber: subsequent subsections

AND AS AMENDED
DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STATUS SHEET

HOUSE JUDICIARY COMMITTEE

48TH Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 225	To extend the period of time following request for release in which a person voluntarily committed to a mental health facility may be detained, etc.	2/28/83	Sen. Daniels	3/9/83	Be Not Concurred In	3/11/83
SB 226	Youth Courts, providing for party's moving for continuances, also in custodial situations	2/4/83	Sen. Crippen	3/9/83	Be Concurred In	3/10/83
SB 236	Crime law, forfeiture, addressing to list of items creating rebuttable presumption; disposition of drug fines, etc.	2/9/83	Sen. Crippen	3/9/83	Be Concurred In	3/9/83
SB 237	To provide a procedure for restitution to victims of crimes by the criminal offenders, etc.	3/1/83	Sen. Halligan	3/21/83	Be Concurred In As Amended	3/22/83
SB 248	Revise laws relating to claim of mental disease or defect in criminal prosecution; allowing a county attorney, etc.	3/1/83	Sen. Towe	3/21/83	Be Concurred In	3/21/83
SB 260	To extend laws relating to operation of motor vehicle while under influence of alcohol to roads and parking areas, etc.	2/2/83	Sen. Halligan	3/11/83	Be Concurred In As Amended	3/22/83

Form CS-32
1-79

SENATE BILL 236

SENATOR CRIPPEN, District 33, Billings, stated that this was an act that adds to the list of items that may be forfeited when used in connection with a violation of the dangerous drugs laws; to create a rebuttable presumption of forfeiture; to provide the means by which the presumption must be rebutted and to provide for the disposition of drug offense fines and of proceeds of the sale of forfeited items. He said that this was amended considerably in the Senate Judiciary Committee to not only expand "things subject to forfeiture" but to create a rebuttable presumption of forfeiture and to provide means by which the presumption must be rebutted. He testified that the profit made on drugs is second only to the profit made by Exxon; and that people dealing in drugs netted over $80 billion last year so you know this is a big business. He indicated that every day there are cutbacks in law enforcement and this bill would solve some of these problems in cutbacks.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, testified that this bill will provide some money to assist in drug enforcement and education. He indicated that this is not going to be a massive amount of money, but it will go a long way toward helping in these areas. He said that this will provide for the seizure, forfeiture and use of three things in addition to things that are alread there - (1) all money and other property used to buy contraband drugs; (2) all property bought from the profits in drug dealing; and (3) all money used to facilitate these drug violations. He recommended passage of this bill.

CHUCK O'REILLY, Sheriff of Lewis and Clark County, said that for the past five years, they have been extremely fortunate in our drug forfeiture; they have acquired a 1965 Volkswagon, a 1949 Ford pickup, a 1968 Dodge pickup and the newest vehicle they have is a 1972 Chrysler Cordova; and if you total up the value of those vehicles, he thought they would be less than $1,000.00. He noted

that they are not going to be setting up any major slush fund for the law enforcement people in the state. He stated that the most they have acquired in monies that could be put in a drug fund would be around $1,000.00; they have a drug fund in Lewis and Clark County that was acquired through fines, forfeitures and court orders; the vehicles that they have acquired most generally are used in undercover work. He did not feel that they would make a lot of bucks off this statute except enough to get some officer training.

There were no further proponents and no opponents.

SENATOR CRIPPEN asserted that this was a very important bill; it broadens the scope not only on the definition of forfeiture but also with what the county, city or state can do with those items - he contended that it was one thing to confiscate them and it was quite another thing to sell them and use the funds for the purpose of combating the original crime to begin with. He pointed out that this bill was commented on favorably in the Billings Gazette and that is unique in itself.

REPRESENTATIVE KEYSER asked about the D.E.A. program. MARC RACICOT responded that this is the Drug Enforcement Act.

REPRESENTATIVE KEYSER said that the federal government has been doing something very basic to this for a number of years. MR. RACICOT replied yes, although they have just expanded their forfeitures to drug profits during the past year. He indicated that they have had some good experiences and some bad. He informed the committee that they got a cattle ranch, which they seized and they had no one to run it and it ended up costing them more money for someone to run it than it would have to just leave it alone.

There were no further questions and the hearing on this bill was closed.

SENATOR CRIPPEN informed the committee that REPRESENTATIVE ADDY will carry Senate Bills 195 and Senate Bill 226, and REPRESENTATIVE SEIFERT will carry Senate Bill 236 on the floor of the House.

The motion carried unanimously.

SENATE BILL 236

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE EUDAILY.

CHAIRMAN BROWN pointed out that Senator Regan sent a note and was very disturbed about the police force getting rich.

The motion carried with REPRESENTATIVE FARRIS voting no.

SENATE BILL 170

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. REPRESENTATIVE SEIFERT seconded the motion.

REPRESENTATIVE ADDY moved that the bill be amended on page 1, line 15, by striking this section and all subsequent sections and reinsert the language on lines 13 and 14 on page 1, and the title chaged appropriately. REPRESENTATIVE SEIFERT seconded the motion.

REPRESENTATIVE SPAETH stated that he would like to speak against the motion as he felt that the Senate did something good here. He explained that the way the bill is written when you have fee simple property that is condemned or acquired some way in the past by condemnation, they said that the owner would have the opportunity to buy that property back. He stated that they also felt that if it was something less than fee simple title, i.e. an easement, that when the public use was no longer needed, that that would be given back to the present holder of that property. He indicated that he thought there was a fairness question and the Senate directly addressed that question; that when a person comes along and condemns a right-of-way easement, that they have benefited and they have received compensation for that right-of-way easement and now they want it back for free. He contended that it may have caused them an undue burden, but they got compensated and hopefully our condemnation laws are written so that they were adequately compensated. He

STANDING COMMITTEE REPORT

March 9, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 236

_____ reading copy (_____)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED; TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, 44-12-203 THROUGH 44-12-205, 44-12-206, AND 46-18-235, MCA."

Respectfully report as follows: That SENATE Bill No. 236

BE CONCURRED IN

DO ~~PASS~~x

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY